

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY

&

THE HONOURABLE MR. JUSTICE K.P.BALACHANDRAN

FRIDAY, THE 15TH JUNE 2007 / 25TH JYAISHTA 1929

RCCRev..No. 28 of 2007

RCA.219/2005 of RENT CONTROL APPELLATE AUTHORITY, KOZHIKODE
RCP.140/2003 of RENT CONTROL COURT, KOZHIKODE

REVISION PETITIONERS/APPELLANTS 1, 2 & 4 TO 10/RESPONDENTS 1, 2 & 4 TO 10:

1. THANKAM, AGED 59 YEARS, DAUGHTER OF OLIYIL ANNAMMA, H.NO.3447,VALAPPIL PARAMBA, NEDUNGOTTUR AMSOM DESOM,P.O.KARAPARAMBA, KOZHIKODE.

2. SRI.MATHIRI, AGED 56 YEARS, DO. DO.

3. KUNCHALA, AGED 54 YEARS, DO. DO.

4. JERINA, AGED 50 YEARS, DO. DO.

5. CLARA, AGED 49 YEARS, DO. DO.

6. PRASANNA, AGED 47 YEARS, DO. DO.

7. ALICE, AGED 45 YEARS, DO. DO.

8. STELLA, AGED 44 YEARS, DO. DO.

9. JOHNSON, AGED 42 YEARS, S/O DO. DO. DO.

BY ADV. SRI.JACOB ABRAHAM
SMT.KOCHUMOL KODUVATH

RESPONDENTS/RESPONDENTS & 3RD APPELLANT/PETITIONERS & RESPONDENTS 3 & 11:

- 1. SREEBHAGYA, AGED 42 YEARS, WIFE OF KUNDOOR
HARSHANANDAN, KUNDOOR HOUSE, NEDUNGOTTUR
AMSOM AND DESOM, KOZHIKODE TALUK.**
- 2. SMT.KRISHNAPRIYA, AGED 5 YEARS, REP. BY MOTHER
SREEBHAGYA, AGED 42 YEARS, DO. DO.**
- 3. C.I. RAJU, FATHER 'S AGE AND NAME NOT KNOWN
TO THE REVISION PETITIONERS,VALAPPIL HOUSE,
KARIKKAMKULAM P.O., KARAPARAMBA.**
- 4. BABU, S/O OLIYIL ANNAMMA, H.NO.3447,
VALAPPILPARAMBA, NEDUNGOTTUR AMSOM
DESOM, P.O.KARAPARAMBA, KOZHIKODE.**

**R1 & R2 BY ADV. SRI.T.SETHUMADHAVAN
SRI.PUSHPARAJAN KODOTH
SRI.K.JAYESH MOHANKUMAR**

**THIS RENT CONTROL REVISION HAVING BEEN FINALLY HEARD
ON 15/06/2007, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:**

J.B.Koshy & K.P.Balachandran, JJ.

R.C.R.No. 28 of 2007

ORDER

Balachandran, J.

The revision petitioners are the tenants in R.C.P.No.140/03 on the file of the Rent Control Court, Kozhikode. The said rent control petition was filed against them as also against respondents 3 and 4 by the original petitioner, who is the predecessor of respondents 1 and 2, claiming eviction under Sections 11(2) (b), 11(3) and 11(4) (i) of the Kerala Buildings (Lease and Rent Control) Act, 1965 (hereinafter referred to as 'the Act').

2. According to the landlords, the scheduled building, which was leased out to the mother of the revision petitioners, was sub let by her to the 11th counter petitioner in the rent control petition; the tenants have kept rents in arrears at the rate of Rs.25/- per month from January 1999 and that

they require the building for their own occupation. The tenants disputed the averment that rents were payable in respect of the scheduled building, as according to them, it was entrusted by the predecessor of respondents 1 and 2 to their mother without rent and as a kudikidappu. They also disputed the case of the landlords that the building was sub let by them and that they require the same for own occupation.

3. The Rent Control Court considered the contention of the petitioners that the building is their kudikidappu as a preliminary issue and after examining RW1 on the side of the petitioners, held that the question of kudikidappu raised by the tenants do not actually arise for consideration of the Land Tribunal and proceeded with the trial of the case. The said order was passed on 17.10.2005. The petitioners/tenants backed out from contest thereafter and R.C.P.No.140/03 was allowed by the Rent Control Court, vide order dated 20.10.2005, ordering eviction on all the grounds alleged.

Counter petitioners 1 to 10 filed R.C.A.No.219/05 before the Rent Control Appellate Authority, Kozhikode assailing the order of eviction. The appellate authority dismissed the appeal confirming the order of eviction passed under Sections 11(2) (b), 11(3) and 11(4) (i) of the Act, concurring also with the finding of the Rent Control Court that the question of kudikidappu does not arise for consideration. Hence, this revision.

4. It is contended before us by the learned counsel for the petitioners that the concurrent order passed by the authorities below, refusing to refer the case to the Land Tribunal, is incorrect and improper and that eviction should not have been ordered against the petitioners on any of the grounds claimed.

5. The claim of the petitioners was that the scheduled building was constructed at a cost of Rupees five hundred only and was allowed to be occupied by their mother free of rent by the father of deceased first respondent, sixty years back.

The Rent Control Court observed from the gift deed (Exhibit A2), produced on the side of the landlords, that the first respondent's father obtained title to the scheduled building and property only under Partition Deed No.3317/1962 and hence, the case set up by the petitioners could not be true.

6. Secondly, it was observed, on the basis of the testimony of RW1 (tenth petitioner), that the construction cost of the scheduled building, having two bed rooms, one veranda, one kitchen and a corridor, constructed of laterite stones with tiled roof and cement flooring, would, in any event, exceed Rs.750/-; that its rent is more than Rs.8/-, which was the rent fetched by another room in the same scheduled building; that the petitioner had no case that their mother had no other property or homestead and the claim of kudikidappu advanced by the petitioners could not, therefore, be found to be bona fide. Apart from tendering evidence as RW1 in the matter of consideration of the question as

to whether the claim advanced is bona fide, while considering the question as to whether the case deserves to be referred to the Land Tribunal under Section 125(3) of the Land Reforms Act, the petitioners did not adduce any evidence before the Rent Control Court during trial of the rent control petition and they backed out from contest. The Rent Control Court considered the affidavit evidence of the landlords Exhibits A1 to A5 and allowed eviction on all the grounds, viz., under Sections 11(2) (b), 11(3) and 11(4) (i) of the Act. The appeal filed by the petitioners also did not meet with success.

7. It is contended by the learned counsel for the petitioners that the question whether the scheduled building could have fetched rent of more than Rs.5/- was not considered by the authorities below. The Rent Control Court found that the building would have fetched more than Rs.8/-, which is the rent of another room in the same premises. No ground is taken in R.C.A.No.219/05, filed by the

petitioners challenging the said finding or contending that the rent the building would have fetched at the time of construction would not have exceeded Rs.5/-. Hence, the contention cannot be advanced in this revision.

8. As found by the authorities below, the petitioners backed out from contest and did not partake in trial only with a view to have the rent control petition got remanded either from the appellate authority or from this Court in revision and to have the eviction proceedings protracted. They cannot succeed in their ingenious attempt, in the circumstances, of this case. The challenge on the finding in favour of the landlords, based on the evidence furnished by them, that they are entitled to have eviction on all grounds under Sections 11(2)(b), 11(3) and 1(4)(i) of the Act, in the circumstances, also cannot survive. This revision is devoid of merit and deserves to be dismissed.

9. Finally, it is urged by the learned counsel for the petitioners that the petitioners be granted at least six months' time to surrender vacant possession of the scheduled building to the landlords/respondents 1 and 2/supplemental petitioners 2 and 3 in the rent control petition. We are of the view that the request requires to be considered favourably, in the circumstances of the case.

In the result, we dismiss this Rent Control Petition. But, at the same time, we grant the petitioners time to surrender vacant possession of the scheduled building to the landlords till 15.12.2007 on the following conditions:

i. that they shall deposit all rents in arrears at the rate of Rs.25/- per month from January 1999 till date before the execution court within one month from today.

ii. that they shall file affidavit before the execution court reporting the fact of deposit of arrears of rent as stated above and undertaking

unconditionally that they shall surrender vacant possession of the scheduled building to the landlords/respondents 1 and 2 positively on or before 15.12.2007 and that the future rents hereafter would be paid on the due dates itself till surrender of the scheduled building is made. Affidavit shall be filed positively on or before 16.7.2007 and

iii. that in case of failure on the part of the petitioners to comply with the above directions they shall not be entitled to the benefit of being in possession till 15.12.2007 and they shall be liable to be evicted immediately after 16.7.2007, in execution of the order of eviction passed against them.

(J.B.Koshy, Judge)

15th June, 2007

(K.P.Balachandran, Judge)

tkv

J.B.Koshy & K.P.Balachandran, JJ.

R.C.R.No.28 of 2007

ORDER

15th June, 2007